THE DECALOGUE JOURNAL

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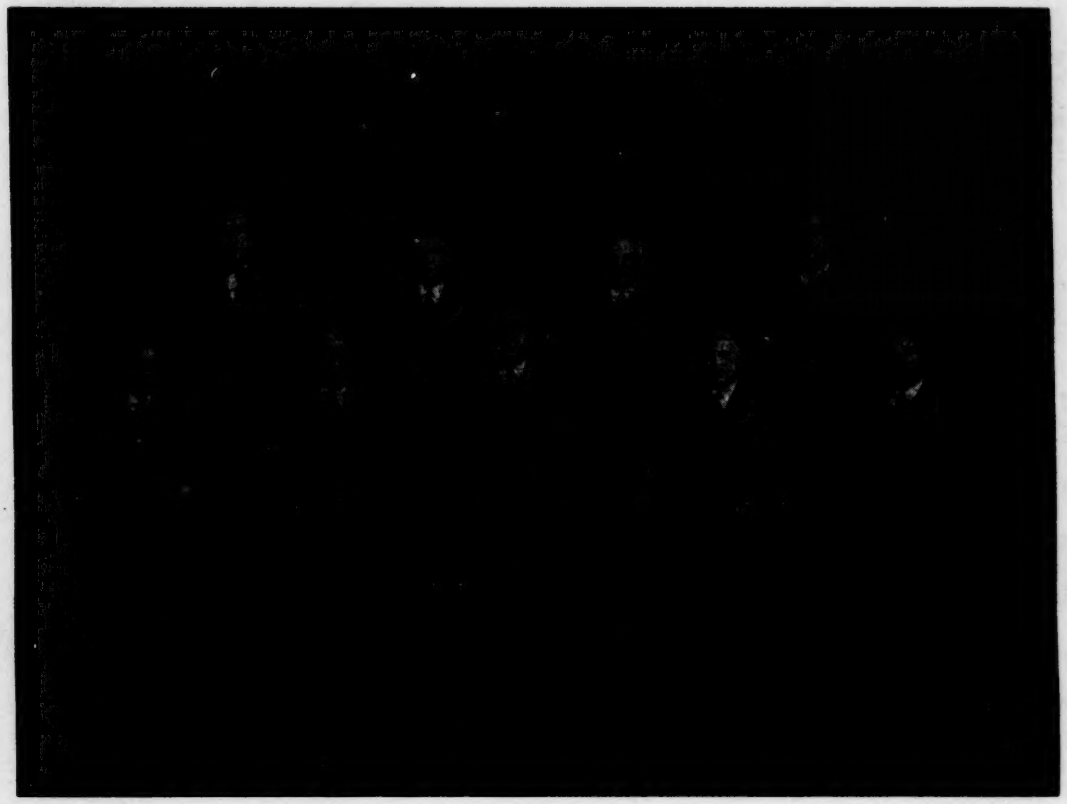

UNITED STATES SUPREME COURT

Standing left to right: Justices Tom C. Clark, Robert H. Jackson, Harold H. Burton, Sherman Minton

Sitting: Felix Frankfurter, Hugo L. Black, Chief Justice Fred M. Vinson, Stanley Reed, William O. Douglas

THE DECALOGUE JOURNAL

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IN THIS ISSUE

Decalogue Law Library House-Warming

A major event in the history of our Society is scheduled for celebration Wednesday, November 29, at our executive offices, 180 W. Washington Street. At that time, announces Miss Eva R. Pollack, chairman of The House and Library Committee, The Decalogue Society of Lawyers will hold an official "House-Warming" to acquaint the membership with the facilities of our Law Library. While many of our members have already made frequent use of the hundreds of legal volumes available for study and research it is confidently expected that the occasion of the dedication and "House-Warming" will further increase the number of users of our Library reading rooms. The use of the Library is free to all members of our Society.

The occasion of the forthcoming ceremony of "House-Warming" constitutes also a special tribute to our past president, Jack E. Dwork, former chairman of The House and Library Committee, whose devotion to the progress and welfare of our organization has helped make our Law Library possible. Dwork, together with several other members of our Board was, for several years indefatigable in building our Library. He led several campaigns to obtain funds for the purchase of books and otherwise directed the realization of a hope into a reality.

It should be also gratefully noted that it is to our past president Roy I. Levinson that the Society is deeply indebted for obtaining permanent quarters for our executive offices.

Please remember the date, Wednesday, November 29, from 2 to 5 P.M. The officers and Board of Managers will be present to act as hosts. Refreshments will be served.

IDEAL JUSTICE

"The most satisfactory ideal I have ever been able to form of justice is embodied in the picture of a judge courageous enough 'to give the devil his due,' whether he be in the right or in the wrong."

—JOHN F. DILLON

DECALOGUE ISSUES

By CARL B. SUSSMAN, *President*

OUR GOVERNMENT is in the midst of a grave international crisis. We are fighting to enforce the mandates of the United Nations and, currently, the United States is carrying the chief burdens in the Korean war. In the prosecution of this conflict to a speedy and a successful conclusion our government has asked all citizens to aid defeat the enemy. Upon us, as citizens and lawyers, rests a responsibility to do our share and more.

The intervention of our country in the present armed conflict again places the lawyer in a position wherein he is afforded the opportunity to render and contribute a definite patriotic service to his country. By reason of his training, experience, and ability the lawyer has again the opportunity to answer the country's call. Our profession and calling provides us with the chance to discharge this important obligation.

As President I am issuing a call to members of our Society requesting that they offer legal services without compensation to all persons in the armed forces and to their dependents, at home. Many of our members, in addition to serving in the armed forces, have been appointed officials of local draft boards. Others have, for many years, and are still serving local and regional boards in the capacity of legal advisors to registrants. Still others have been, and doubtless will be again appointed Government Appeal Agents. These must be lawyers.

The Selective Service System is presently organizing additional provisional boards which will be placed in operation in the event of an all-out emergency. There will be a great need for additional manpower to assist these local boards. The legal profession will be expected to do its part in assisting and furnishing this manpower in order to insure the efficient operation of Selective Service.

I am now forming a War Service Committee and am requesting our members to participate actively in this patriotic effort. Further, I should like to enlist your support for the purpose of creating a Lawyers Panel the function of which will be to render legal services, without compensation, to the men and women on the firing line.

I am pleased to report that I have made available the services of our bar association to Colonel Paul G. Armstrong, State Director of Selective Service for the State of Illinois. I quote in part from his reply:

> "I am happy to know that you are again willing to assist us in our work and that a War Service Committee is being organized. When your committee is ready and you have your Lawyers Panel, we may wish to notify our local boards of the services that will be available to registrants in that connection. Please advise me when your committee is ready to function and who we are to contact for assistance."

I am urging the members of The Decalogue Society of Lawyers to agree to serve on either the proposed Lawyers Panel or on the War Service Committee. In so doing we will again share in a most worthy activity of our Society in a great cause. Your willingness to serve and your immediate response will be further evidence that our organization is a potent force for good in the legal profession and in this community.

Please write to me offering your help in this patriotic endeavor. When the personnel of the committee is complete, I shall be happy to assign you to a specific duty. The Decalogue Society of Lawyers needs you. Your country seeks your help.

> *"These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country; but he that stands by it now deserves the love and thanks of man and woman. Tyranny, like Hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph . . ."*
>
> —THOMAS PAINE, *The American Crisis*

Lawyers in Bankruptcies

Condensed by BERNARD H. RASKIN

The Editorial Committee is indebted to member Bernard H. Raskin for the condensation of the following article.

In the July 1950 *Referee's Journal* there is an article written by Charles O. Porter, Assistant Director of Survey of the Legal Profession, a committee of the American Bar Association. It is based on a survey made through the co-operation of various US District Courts and Martindale-Hubbel, Inc., of bankruptcies for the period March 31, 1949 through July 1, 1950. It has seemed, states Mr. Porter that:

> The bankruptcy records in the federal courts would show (1) whether many lawyers were resorting to bankruptcy to avoid debts and judgments which they could not pay, and (2) whether those debts and judgments were for money which the lawyers owed their clients—as where a lawyer had collected a sum of money for a client and failed to pay it over. As no such study has ever been made, the Survey asked me to conduct an investigation and I now submit my report.

During the period surveyed there were 36,894 bankruptcy proceedings filed. Two hundred and twenty of this group were professionals and of the 220 only 15 were lawyers. However, it must be noted that 10 went bankrupt for reasons connected with matters outside the practice of the law. And one of the five paid his debts in full. Percentage-wise, Mr. Porter says, lawyers constituted only one hundredth of one percent (.01%) of all the bankrupts during the period covered; and, only one and eight-tenths percent (1.8%) of the professionals who were bankrupts. It should also be noted that no law firm went bankrupt.

Mr. Porter then gives some examples:

Mr. "Ayman" made $4,900 in 1946 and $3,600 in 1947. He had a wife and child. His debts were $1,964. After filing he went to work for a corporation at a salary. Mr. "Beman" was in practice for 50 years. His debts were $13,384, $9,000 of said amount being for rent and $3,000 for a deficiency judgment and another judgment. It might be also noted that no professional dishonesty was involved. Mr. "Ceman" went bankrupt because of "illness and domestic troubles." He was 53 years old and a member of the bar of two major northern states. He estimated his net worth as $10,000. Mr. "Deman" had only $1,723.76 in debts of which amount $1,420 was for medical services arising out of an automobile accident.

Mr. Porter then goes on to say: "Ayman" and "Deman" had less than $2,000 in debts. "Deman" was evidently floored by the expense of the accident while "Ayman" gave up the practice of law for a salaried position and wanted to start with a clean slate.

The $9,000 rent owed by "Beman" bespeaks an indulgent landlord and a declining practice. The "illness and domestic troubles" of "Ceman" are, of course, not confined to him or to lawyers; it cannot be stated as to whether these difficulties preceded or succeeded his, evidently inadequate law practice.

This, however, is Mr. Porter's main point; the number of lawyers seeking refuge in bankruptcy is infinitesimal. This fact is contrary to the impression a number of persons, including lawyers, have about the legal profession. If many lawyers are slipshod in their dealings and quick to find a legal way out from under their responsibilities, the evidence does not lie in the bankruptcy records kept in our Federal Courts. On the contrary they hardly use bankruptcy courts at all. A lawyer, however, cannot rid himself through bankruptcy of liability for fraudulent conduct or for betraying the trust a client imposes in him.

The official record proves Mr. Porter's thesis. Out of 36,894 bankruptcies, 220 were professionals. Out of the 220 only fifteen were lawyers. And of the fifteen, ten were for causes unrelated to the practice of law. Of the remaining five, one, later, paid his debts and four of the five petitions filed were based on debts incurred for *office expenses*. None, and this is the happy meaning of the findings of the Survey of The Legal Profession investigator, were liable for malfeasance or misappropriation of funds.

Foundation Fund; A Plea

By NATHAN SCHWARTZ

Mr. Schwartz, Chairman of the Decalogue Foundation Fund Committee is a Director of the Board of Jewish Education, Chicago.

Several wealthy Americans, whose sense of responsibility to humanity is keen, have, from time to time, set up various foundations for the good of mankind. The last and greatest of these is the Ford Foundation, with an initial grant from the Henry Ford estate in excess of $250,000,000.00.

The desirability of such and other philanthropic enterprises cannot, of course, be questioned. The Mellon Foundation for industrial research helps industry. The Carnegie Foundation spends money on problems confronting higher education; The Spellman Fund is concerned with the Betterment of Public Administration. The tasks before the Twentieth Century fund, to cite another instance, deal with investigation and dissemination of information in planning sound economic policies.

The membership of The Decalogue Society realizes, I believe, that if lawyers are to be helped, they must somehow arrange to help themselves. This, of course, is true of most trades and professions. Each provides assistance for their own.

The members of our Society are part of a young and a vigorous group. Immediately there are not of record before our organization urgent calls for assistance. It is my conviction, however, that, nevertheless, now is the time to build up a fund so that if and when the necessity arises, we will be prepared to meet an emergency. It is axiomatic of the thesis of building a Foundation fund that it be built in prosperous times only.

All too often has the answer been given to a public spirited citizen who solicits in behalf of philanthropic causes that "charity begins at home." To the individuals, however, who so react to pleas for help, it ends where it begins —in their homes. They do not care about the welfare of others. A basic tenet of the Talmud insists that the act of giving a helping hand, outweighs all other duties and obligations. It —the giving—"delivereth even from death," and "he that feeds the hungry feeds God also."

Our Foundation is set up for the purpose of giving financial aid to any member who may need it, or may be worthy thereof. The aid may be in the form of loans without interest or any charge whatever or it may be an outright contribution, if a situation so requires, and the funds in the treasury so permit.

The fund is administered by three trustees. The President of our Society is ex-officio a member. All worthy causes are considered and immediately acted upon. To date all borrowers from the fund have repaid their loans. In not one instance has a borrower deviated from fulfilling his obligation.

I believe that lawyers have always been rugged individualists. Never as a group have they asked financial consideration from anyone outside of the profession. They have always carried on their work with respect and dignity. It does happen, however, that in the ranks of the bravest, one occasionally falters or falls. Shall we, his comrades, desert him or shall we respond to his call, and extend a helping hand? The challenge is direct. There is an obligation and ours is the duty to fulfill and to discharge it.

It is an obligation and a duty in which we must not fail. I call upon all the members of The Decalogue Society of Lawyers to search their hearts and to realize their responsibility to their fellow lawyers and give to the Foundation Fund to the extent of their ability. No contribution is too small. Give what you can.

LIONEL RUBY

Member Lionel Ruby, Professor of Philosophy at the Roosevelt College is the author of a recently published book, *Logic: An Introduction.* J. B. Lippincott Co., Publishers, announce that more than fifty universities and colleges in this country have adopted this work as a textbook in Philosophy and Logic courses.

Illinois Inheritance Tax

By PAUL G. ANNES

Paul G. Annes, federal tax counsellor and civic leader is a member of our Society's Board of Managers.

Seldom can it be said of a tax law that is intended to produce revenue that it won't cost the taxpayer anything. That can be said about the 1949 amendments to the Inheritance Tax Act of Illinois. And yet, in practice it probably will not work out that way in many cases.

Prior to the Amendments, estates of Illinois decedents had to file an inheritance tax return within twelve months from date of decedent's death and had to pay the tax due or to deposit this amount within the same time. The Federal Estate Tax Return had to be filed within fifteen months from date of death. Thus the Illinois Inheritance Tax Return would be filed first and the hearings thereon usually disposed of without reference to the Federal Estate Tax Return. Frequently, questions like valuation of property would be determined one way for the purpose of the State Inheritance Tax and differently later for the purpose of the Federal Estate Tax. It may well be that this difference will largely disappear in the future, and altogether as an indirect result of the 1949 Amendments. Nevertheless, this result may in most cases be the most important consequence of the change in the Illinois law.

A few words about the Federal Estate Tax may be in order, for an understanding of this change. The Federal Estate Tax is made up of two parts, the first or basic tax, determined under Section 810 of the Internal Revenue Code, and the second part under Section 935; the basic tax is much the smaller portion. For the purpose of the basic tax there is a specific exemption of $100,000.00; and on the basis of the net estate thus arrived at the gross basic tax is computed. Against this tax a credit is then allowed in the amount of the State Inheritance or Estate Taxes, but not to exceed 80% of the gross basic Federal Estate Tax.

Thus if the gross basic Federal tax should be $8000.00, the maximum credit which could be taken against it would be $6400.00; but if the Illinois Inheritance Taxes should total only $5000.00, the credit is limited to the $5000.00 and the Federal Treasury benefits accordingly. The change in the Illinois law is intended to give the State of Illinois, as an addition to the regular inheritance tax, really an *estate* tax equal to the difference between this 80% credit against the basic Federal Estate Tax and the Illinois Inheritance Tax. (Sec. 30 (a) and 30 (b) of Inheritance Tax Act; Ch. 120 Ill. Rev. Stat.). It will be noted that the estate does not in any case incur any larger taxes in the aggregate; to the extent of the new Illinois "pick-up" tax, the Federal Estate Tax is reduced.

In this way the Illinois tax is directly tied up with the Federal Tax. Accordingly, the amendments have changed the filing and tax payment date to eighteen months in place of twelve months after date of death, and require the filing with the Attorney General of a verified copy of the Federal Estate Tax Return. In many estates, up to about $200,000.00, that take advantage of the marital deduction, there will be no basic Federal Estate Tax in view of the specific exemption of $100,000.00; hence there will be no possibility of any additional State tax. But the collateral effects arising from the change in the Illinois law will be there just the same; that will come about because the State authorities will have before them a copy of the Federal Estate Tax Return.

HARRY D. KOENIG; ALEX M. GOLMAN

Harry D. Koenig, former Treasurer of our Society and long active in the affairs of our organization has been elected President of The Lincoln Park District of the Zionist Organization of Chicago.

Alex M. Golman, retiring President of the Lincoln Park District and member of the Decalogue Society of Lawyer's Board of Managers was presented with a Golden Book certificate emblematic of an acknowledgment that his name, together with other distinguished workers in the Zion cause, is inscribed in the Golden Book, kept in Israel.

Federal Internal Security Act of 1950

By BYRON S. MILLER

We are indebted to member Byron S. Miller for this able analysis of the McCarran Bill. This article written, originally for the Commission of Law and Social Order of the American Jewish Congress, of which Mr. Miller is Midwest Regional Director, poses, of course, provocative problems for the constitutional lawyer.

Mr. Miller, cum laude, University of Chicago Law School is former Editor in Chief, University of Chicago Law Review. For six years with the U. S. Government he held among other offices, the position of Associate General Counsel in the office of War Mobilization and Reconversion.

The act is now the law of the land over the President's veto. In its final form its significance requires that its provisions be understood by intelligent citizens. This is a brief analysis of the contents of the law with some indications of its effects where predictions seem warranted.

Although within the form of a single law, Congress has enacted legislation in five separate although somewhat related fields. These are:

1. Registration of certain types of organizations.
2. A new criminal subversion provision.
3. Immigration and naturalization provisions.
4. Detention camps provisions.
5. Espionage Act amendments.

Because many of these provisions are unrelated to each other, it is clear that no single test case can determine the constitutionality of the entire statute. More likely, constitutionality questions will arise in court on a piecemeal basis over an extended period of time.

I. Registration of Organizations

Borrowing practically verbatim from the Mundt-Ferguson Bill, the new law requires that all "Communist-Action" organizations and "Communist - Front" organizations register with the Attorney General. A "Communist-Action" organization is defined as one which is substantially controlled by a foreign Communist government and which operates primarily to advance the objectives of the World Communist movement. Several criteria are specified in the Act including the extent to which the organization is directed by a foreign government and does not deviate from the foreign government's policies, the extent to which its principal leaders or a substantial number of its members recognize the disciplinary power of the foreign government or consider allegiance to the United States subordinate to that to the foreign country and the extent of secrecy in its operations.

A "Communist-Front" organization is one which is substantially controlled by a "Communist-Action" organization and which operates primarily to support the "Communist-Action" organization or to advance the objectives of the world Communist movement. Criteria include the extent to which its leaders are active in the "Communist-Action" organization. The extent to which its policies do not deviate from those of the "Communist-Action" organization, and the extent to which its program is used "to promote the objectives" of the Communist-Action organization.

If an organization does not register voluntarily, the Attorney General may start proceedings before a newly created Subversive Activities Control Board, and its decision may be appealed to the courts. There is no exception in the law to permit the FBI to keep the identity of its informants secret.

The most significant thing about this provision of the Act is that *no penalties or prohibitions take effect until after an organization has registered* voluntarily or a final order requiring registration has been entered. Newspaper reports indicate that no organization will register voluntarily and the lengthy proceedings of the New York Communist trial offer a fairly clear indication that no final orders to register may be entered for quite some time to come. Thus the Act's prohibitions denying members of such organizations the right to government jobs, to passports, or to work in "defense facilities," and requiring that material issued by them be labelled: "Disseminated by Communist Organizations," will not go into effect until such a final order has been entered.

(The "defense facilities" provision designed to prevent members from working in defense factories, can take effect only as to factories publicly so labelled by the Secretary of Defense. Since this would constitute a disclosure of information of military value, the President has already indicated he will not comply and hence this provision may never take effect.)

Even without the law, members of such organizations are disqualified from government employment through the loyalty order program, and for some time passports have been denied in similar cases.

Individuals listed as officers or members of "Communist-Action" organizations or as officers of "Communist-Front" organizations in its registration are given an opportunity to disprove their connection before the registration is made public. Otherwise the registration will be publicly available. Members of "Communist-Action" organizations are required to register individually if their organization fails to comply with a final order to register. Thus, after an order requiring the Communist Party to register has been flouted, individual Communists may be jailed—simply for refusal to register.

To summarize, the registration provisions may not force any registrations or any resultant restrictions for a considerable time to come. Their significance, however, lies in their indirect effects. The very fact that mere membership in some organizations may bring penalties is sufficient to discourage membership in *any* organization by teachers and other public servants, and by individuals in wholly private activities. The statutory standards are broadly drawn and, in the event of a national emergency, a wave of hysteria could easily bring wholesale abuses of the statutory powers. And, like other forms of slander, the charge tends to stick even after the individual obtains ultimate acquittal.

II. Criminal Prohibition

Section 4 (a) of the new law, borrowed from the Mundt-Ferguson Bill, directly prohibits a conspiracy or agreement "to perform any act which would substantially contribute" to the establishment in the United States of a foreign-dominated totalitarian dictatorship.

The words "substantially contribute" are extremely vague and broad. Similarly, although conspirators are frequently punished, "agreement" has never previously been made a crime. For these reasons both the New York and the Chicago Bar Associations concluded that these provisions are unconstitutional, the position also taken by the President in his veto message. No constitutional test will be provided, however, unless the Attorney-General starts a prosecution under this provision.

III. Immigration and Naturalization

A. Immigration and Deportation of Aliens

In addition to prohibiting immigration and requiring deportation of aliens who are members of the Communist Party of the United States or of other countries, the law similarly excludes aliens *who at any time in the past* were members of a Communist Party of any country or who are *or were* members of any totalitarian party of any foreign state. In addition, aliens who advocate the economic, international and governmental doctrines of Communism or any other form of totalitarianism, or who belong to any organization which does so are excluded.

These provisions not only exclude reformed Communists as our intelligence agencies have protested, but appear to exclude and require the deportation of all "ex-"Nazis and all supporters of Franco and Peron.

As written, these prohibitions appear to apply not only to those seeking permanent admission to the United States but to all visitors other than representatives of foreign governments.

Thus, we are confronted with the enactment in this bill of a provision for exclusion of Nazis that we unsuccessfully sought in the Displaced Persons legislation. On the other hand, the State Department has already indicated that it will seek prompt repeal of these provisions because they endanger our relations with totalitarian, non-Communist countries.

It should be noted that a new provision explicitly directs that no alien be deported to a country in which he would be subjected to physical persecution. This is particularly important for Jews from certain Near East countries.

B. Naturalization

No person may become a naturalized citizen who is or *within ten years past has been* a

member of a "Communist-Action" organization or who advocates or belongs to any organization which advocates the economic and international or governmental doctrines of Communism or other forms of totalitarianism.

Aliens who have *within the ten years previous* been a member of a "Communist-Front" organization shall be ineligible unless they affirmatively withdraw from such organization within three months of its actual registration or being ordered to register.

Even more important if the person is naturalized after January, 1951, he may have his naturalization *cancelled* if within five years thereafter he becomes a member of any organization membership in which would have disqualified him from naturalization or if he becomes a member of any organization "membership in which at the time of naturalization would have raised the presumption that such person was not attached to the principles of the Constitution of the United States and not well disposed to the good order and happiness of the United States."

IV. Detention Camps

In the event of invasion of the United States, formal declaration of war, or an insurrection in aid of a foreign enemy, the President is authorized to declare an "Internal Emergency Security." At that time the Attorney-General may issue warrants for the arrest of all persons as to whom "there is reasonable ground" to believe that such persons probably will engage in "espionage or sabotage."

There follows a hearing before a preliminary hearing officer in which the person arrested has the opportunity to produce evidence and cross-examine witnesses, except that the government may be excused from disclosing the identity of its sources or its evidence where it believes such disclosure dangerous to the national safety and security. This marks the first time that a statute has followed the lead of the President's Loyalty Order in denying the accused an opportunity to know by whom and with what he is charged. Curiously enough, no such exemption appears earlier in the Act with regard to hearings on the nature of organizations where the Attorney-General is seeking to compel them to register. The preliminary hearing officer's order may be appealed to a newly-appointed Detention Review Board and from the Board to the courts.

This is the first time that the law has ever permitted an arrest and detention for some act that a person might commit as distinguished from a deed already done. Some limits are established for determining when espionage is "probable," but these criteria are not exclusive. Such criteria are more or less limited to whether or not the person arrested has had previous instruction or activity in espionage or sabotage, or whether he was a member of the Communist Party after January 1, 1949.

A special provision authorizes a person arrested to obtain indemnity for loss of income if an appeal establishes that he was improperly detained.

V. Espionage Act

The law strengthens the Espionage Act by redefining the crime to be the mishandling of classified information, and by lengthening the Statute of Limitations to ten years instead of the present short limitation.

Other special provisions amend the Alien Registration Act, prohibit the picketing of court houses and make other changes in the naturalization provisions.

HONORED

The Zionist Organization of Chicago together with the local branch of the Jewish National Fund were recently hosts to several hundred friends and admirers of Mr. and Mrs. Oscar M. Nudelman, guests of honor, in the Community Hall of Atereth Zion Congregation.

The occasion marked more than twenty-five years of active service of the Nudelmans in the vineyard of the Zionist movement. Oscar M. Nudelman is a past President of The Decalogue Society of Lawyers.

The Nudelmans were presented with a Golden Book Certificate which testifies that their names, together with others whose contribution to the cause of Israel helped build the new nation, are inscribed in The Golden Book which reposes in Jerusalem.

Many members of our Society were present at the affair. I. Archer Levin, former President of The Decalogue Society of Lawyers, was chairman of the event.

APPLICATIONS FOR MEMBERSHIP

APPLICANTS	*SPONSORS*
Michael A. Gaynes	Samuel Allen, L. Louis Karton and Morris K. Levinson
Ira J. Miller	Judge Harry M. Fisher and Samuel Allen
Lester Slott	Bernard Neistein and H. Burton Schatz
Harold S. Iglow	Jack E. Dwork and Herman Landfield
Samuel Schachtman	M. G. Stein, Edwin Pizer and Joseph R. Friedman
Dan Brusslan	Harry Marcus and Benjamin Weintroub

ELECTED TO MEMBERSHIP

Arthur E. Berlin	Harold A. Liebenson
Louis L. Biro	Max A. Reinstein
Benjamin Bromberg	Joseph A. Rosin
Earl A. Deutsch	Hyman Schechet
Milton Falkoff	Benjamin S. Schwartz
Irving D. Fasman	Irwin B. Smith
Paul H. Leffman	Harry S. Stark
Samuel D. Golden	Ralph J. Stark
Bernard Samuel Kaplan	Calvin R. Sutker
David Katz	George L. Weisbard

PLACEMENT AND EMPLOYMENT

Eugene Bernstein, Chairman of the Placement and Employment Committee of The Decalogue Society of Lawyers urges the closest co-operation of our entire membership with the work of his Committee. Bernstein is in receipt of frequent requests from the younger members of our Society, recently admitted to the Bar, who are seeking employment in law offices or, for space in a downtown location wherefrom they may make a "start" in the practice of a profession. Many such applications are, currently, in our Chairman's file. If there is an "opening" in your own law office or you know of one elsewhere, please consult: Chairman Eugene Bernstein, Placement and Employment Committee, c/o The Decalogue Society of Lawyers, 180 W. Washington Street.

MAXWELL ABBELL

Member Maxwell Abbell, long an active communal figure in the Middle West has been recently installed President of the South Side Hebrew Congregation. Abbell is also chairman of the Board of Governors of the College of Jewish Studies.

Liquidation—1951 Style

By GEORGE L. WEISBARD

George L. Weisbard, member, is admitted to the Illinois and Michigan Bars. He is also a certified public accountant.

While the general purpose of the recently enacted Revenue Act of 1950 is to increase taxes, there are several provisions which have a contrary effect. Of possibly great interest is the provision permitting substantial tax saving on the liquidation of corporations which hold appreciated property. Specifically, this is accomplished by amendment of Section 112(b)(7) of the Internal Revenue Code. The amendment (by Section 206, Revenue Act of 1950) permits the stockholders of domestic corporations to elect to distribute the assets of the corporation in complete liquidation on certain favorable terms.

Why Liquidate?

The increase in corporate tax rates is already in effect. The foundation of a retroactive excess profits tax has been laid by Section 701 of the 1950 Revenue Act. The long-promised removal of double taxation of corporate income is still only a mirage. Hence it is often more economical to liquidate closely-held corporations which can thereafter be operated either as sole proprietorships or as partnerships.

For example, assume that a corporation was formed to take title to certain real estate or unlisted corporate securities which are not readily marketable. By 1950 the property has tripled in value. In the meantime, however, the rents or dividends on such property have been inconsequential, or have been distributed to the stockholders annually. The stockholders now wish to get rid of the corporate entity in order to escape corporate tax burdens or to put themselves back in the same position in which they would have been if they had not incorporated. In short, the corporation has outlived its usefullness.

While this new provision will have a wide possible application, it will be particularly of appeal to building corporations or to personal holding companies. In fact, it was for the express purpose of the latter group that the Senate Finance Committee acted. That Committee's report on H.R. 9820 says in this connection: "This election will facilitate the liquidation of certain domestic corporations, especially domestic personal holding companies. Your Committee recognizes the undesirable character of domestic personal holding companies and wishes to expedite their liquidation."

Other likely applications are companies with substantial income from natural resources, patent royalties, valuable leaseholds, franchises, or good-will.

Purpose of Section 112(b)(7)

An ordinary liquidation will impose a tax on the stockholders based on the entire appreciation in value even though unrealized from a business point of view. If liquidation occurs under those provisions, the stockholders will frequently be compelled to resell in order to establish the amount of taxable gain or to raise the amount required to pay the tax. The result has been a continuation of the tendency in the Internal Revenue Code to discourage liquidations of such corporations. At the same time, the property remains frozen in the corporation since any gain resulting from a sale of the assets by the corporation will not be entitled to the benefits of the capital gain provisions when distributed to the stockholders.

The new subsection permits postponement of tax on unrealized appreciation in value on liquidation until the property is sold by the stockholders. By taxing the gain on a liquidation to the extent of accumulated earnings and profits as an ordinary dividend, the application of the subsection is limited primarily to those corporations which have not been used for tax avoidance purposes.

An interesting historical sidelight is in similar elections permitted by the Revenue Acts of 1938 and 1943. The first was limited to liquidations consummated in the single month of December 1938. The 1943 provision was broader in allowing liquidations thereunder to be made in any calendar month of 1944.

When the 1938 Act was under consideration, Senator George said, in connection with this subsection: "Although the amendment is limited to liquidations completed within the first taxable year beginning after December 31, 1937, it is predicted the policy embodied within it will, perhaps, be recognized ultimately as sound, permanent policy by reason of the fact that it avoids the administrative difficulties involved in the taxation of unrealized gain."

Requirements Check List

A check list of the essential ingredients for compliance with the statute must contain the following: (1) only domestic corporations are eligible; (2) a plan of liquidation is required; (3) the plan's adoption date may not be earlier than January 1, 1951; (4) the liquidation must be pursuant to the plan; (5) only complete liquidations will qualify; (6) the maximum time allowed for liquidating distributions is one calendar month in 1951.

If the foregoing elements all co-exist, the corporation's taxable year is irrelevant.

Under the 1944 election, extensive regulations were issued by the Treasury Department prescribing precise procedures. (T.D. 5356, 1944 C.B. 220; Reg. 111, Sec. 29.112(b)(7).) Logically, these same regulations will be adapted to 1951 corporate liquidations. Reference has been made to those regulations for some of the material herein.

Statutory Tax Pattern

In brief, the gain to be recognized is an amount which is not greater than: (1) the accumulated earnings; or (2) money received on liquidation.

Thus, at the outset, it is essential to ascertain the fair market value of the property to be distributed in liquidation. This is important in order to determine if there is a gain on liquidation, for the election under Section 112(b)(7) relates to the "recognition of gain."

Section 112(b)(7) breaks the liquidation gain of non-corporate shareholders into three separate segments:

(1) That portion which does not exceed accumulated earnings. This is taxed as an ordinary dividend.

(2) That portion of the property distributed consisting of money (or stock or securities acquired after the basic date) which exceeds the accumulated earnings. This is taxed as a capital gain.

(3) The balance of the gain. This is tax free.

In the case of a qualified electing shareholder which is a corporation, the entire amount of the recognized gain is taxed as a capital gain. Thus the dividend-received credit is not available at liquidation time. Query: Why not get the credit by a dividend prior to the adoption date?

Gain or loss must be computed separately on each share of stock owned by a qualified electing shareholder at the time of the adoption of the plan of liquidation. It is to be noted that the special treatment accorded by Section 112(b)(7) applies only to the gain on each share and not to net gain computed by setting off losses realized on some shares against gain on others. The reason for excluding losses is the general philosophy permeating the Internal Revenue Code that in exchange losses are not recognized.

Electing Stockholders

Since only "qualified electing shareholders" are entitled to the benefits of Section 112(b)(7), it becomes important to determine the elements which go to make a "qualified electing shareholder."

All stockholders are divided into two categories: (1) corporate; (2) non-corporate. Separate rules apply as to each category.

The statute excludes specifically any corporation which was the owner of 50 per cent or more of the voting power at any time between August 15, 1950 and the date of the adoption of the plan of liquidation. Other corporations may qualify on the same basis as non-corporate shareholders, but each group is treated as a separate category.

Any shareholder is a qualified electing shareholder if both of the following elements co-exist: (1) a written election coming under Section 112(b)(7) has been made and filed. Once so made and filed, the election cannot be withdrawn or revoked. (2) Similar elections have been made and filed by owners of stock (of the same category) possessing at least 80 per cent of the total voting power.

It is to be noted that for the purpose of this section, a stockholder need not be entitled to vote on the adoption of the plan of liquidation. Moreover, it is immaterial, for the purpose of qualification, whether the shareholders making such elections actually realize gain upon the liquidation.

Comes now the "problem child" or recalcitrant stockholder. What to do with these dissenters? It was observed previously that at least 80 per cent of the vote-holding stockholders must concur on the plan. Hence, no serious obstacle is presented if the minority is not over 20 per cent of the total. In that event the non-electing stockholders will be taxed under the general rules applicable to complete liquidations. Section 115(c), Internal Revenue Code. That is to say, the entire gain realized will be reportable as a capital gain. In some instances, however, this may be a blessing in disguise. Calculus (of an elementary sort) will show whether it is more desirable to pay the full tax under 115(c) rather than the limited tax pursuant to 112(b)(7).

When noses are counted and the refractory shareholders constitute more than 20 per cent of the aggregate—what is the panacea? Cause the corporation to redeem the shares of the dissident stockholders. This should be effectuated prior to both: (a) the adoption of the plan of liquidation under Section 112(b)(7) and (b) the month of wind-up under the plan.

Accumulated Earnings

At the outset, it is important to bear in mind that accumulated earnings are not necessarily the same as the corporation's earned surplus. For a comprehensive discussion of the differences see "70% Distribution of Profits," CCH-1949, pp. 61-91.

The statutory concepts of accumulated earnings are contained in Internal Revenue Code section 115. In addition to the foregoing, there are the following further provisos specifically set forth in Section 112(b)(7): the accumulated earnings and profits are to be computed as of the last day of the month of liquidation. This is to be without diminution for any distributions made during such month. A cash basis corporation (as well as accrual basis companies) is required to accrue all items of income and expense up to the date on which the corporate property is completely transferred under the liquidation plan.

For a case dealing with the vital determination of earnings and profits in a liquidation under Section 112(b)(7) of the 1938 Act, see *Wheeler v. Commissioner*, 324 U. S. 542 (1945).

Pre-liquidation Problems

Well in advance of the adoption date, careful attention should be focused on three significant features capable of effecting further tax economies. These are: (1) management of cash, (2) reducing accumulated earnings, and (3) disposal of "depreciated" property. Each merits thorough scrutiny.

At the liquidation date, cash will be either: (a) not in excess of accumulated earnings, or (b) in excess of accumulated earnings. Where the cash is no greater than the accumulated earnings, no problem is presented. The amount of accumulated earnings is taxed as a dividend and no further tax arises. Where, however, more cash is available than the earnings yardstick, a capital gain will generally result. What, then, is to be done with such excess cash? The following tentative solutions might be advanced: (1) invest in securities, (2) invest in other property, or (3) reduce liabilities. Let us examine the tax consequence of each.

The first "solution" has been vetoed in advance. To avoid conversion of excess cash into securities which could then be distributed tax-free, the basic date of August 15, 1950 has been written into the Act. Thus, any securities acquired by the corporation after August 15, 1950 are regarded as cash for the purposes of this section. The end result is to tax as a capital gain so much of the distribution (in excess of accumulated earnings) as consists of money or of stock or securities acquired by the corporation after the basic date.

Other property as an outlet for excessive cash appears proper. This for the reason that the section taboos only "stock or securities" purchased after August 15, 1950. The caveat is patent—business purpose should be available to justify post-basic date acquisitions of other property.

Liability reduction with surplus cash seems similarly advisable. While it is not likely that many companies have encumbrances at the same time that they have cash exceeding accumulated earnings, the path is illumined for those who may need it. Post-liquidation refinancing of such retired or reduced liabilities must, of necessity, be handled with tact last their bona fides be questioned.

So much for the pre-liquidation management of cash. We turn now to the problem of how to reduce accumulated earnings prior to liquidation. In many cases, it will probably be advisable to pay a 1950 dividend in contemplation of liquidation. The objective here is twofold: to utilize the relatively lower tax rates of 1950; and to level off the income peak generated by a 1951 liquidation of the entire accumulated earnings. Such pre-liquidation dividends can be in cash, in property, in notes, or by a consent dividend. (Internal Revenue Code Section 28.) Dividends in kind will, of course, comprise only such property with fair market value no greater than its adjusted basis.

Another way of reducing accumulated earnings is to retire preferred stock at a premium as was done in *Edith K. Timken*, T. C. Memo. June 7, 1944. Where the company has no preferred stock, the rationale of the Timken case suggests the possibility of a partial liquidation of some of the stockholders prior to the general wind-up.

Consider now the third pre-liquidation problem. Since the avowed purpose of Section 112(b)(7) is to care for property with unrealized appreciation, it may well be asked: What about assets which have declined in value? Assume a corporation with two properties. One has declined in value to the point where its tax base is greater than its present fair market value. The other property has appreciated in an amount greatly in excess of the first property's value loss. Assume further that the company has substantial accumulated earnings. Under these circumstances the "depreciated" property should be disposed of before adopting the liquidation plan.

The disposal routes are two: sale or dividend. Either will diminish accumulated earnings and the resultant tax on liquidation. The choice should be made only after a cautious computation of the overall tax effects. In this connection, the provisions of Section 117 I.R.C. will loom large. If the transfer is by sale, the cash proceeds will be dealt with as previously discussed.

Liquidation and Dissolution

The liquidation must be completed within one calendar month in 1951. This requirement, however, will be considered to have been complied with even if cash is set aside under arrangements for the payment, after the close of such month, of unascertained or contingent liabilities and expenses. This is subject to the proviso that such arrangements must be made in good faith and that the amount set aside is reasonable.

It is not necessary for the corporation to dissolve in the liquidation month. Nevertheless, it is essential that a status of liquidation actually exists at the time the first distribution is made under the plan, and such status must continue until the dissolution date. "Liquidation status" exists when the corporation ceases to be a going concern and its activities are confined to winding up its affairs, paying its debts, and distributing the balance to its shareholders.

Post-liquidation Problems

Rules for determining the post-liquidation basis of the property received in liquidation under Section 112(b)(7) are set forth in Code Section 113(a)(8). The basis of such property is the basis of the stock cancelled, decreased by the amount of money received, and increased by the amount of recognized gain. (See also Section 29.113(a)(18)-1 of Regulations 111.)

If there is the possibility that the property will be sold soon after liquidation, it will generally be preferable not to employ Section 112(b)(7). In any event, if such sale materializes, there will arise the question of what holding period attached to the property being sold. After normal complete liquidations, the holding period of property received in liquidation runs from the receipt of such assets. In distributions under Section 112(b)(7), however, we do not have a liquidation in the statutory sense. What we really have is an "exchange." Hence, Section 117(h)(1) applies and results in a tacking of the holding period during which the shareholder held the stock surrendered by him in the liquidation.

Documents Check List

The plan of liquidation will constitute part of the corporate minutes along the lines previously analyzed herein. For other information to be filed by the liquidating corporation see Code Section 148(e). In addition, the following documentary data is required from each stockholder:

(a) A statement of his stock ownership in the liquidating corporation as of the date of the distribution, showing the number of shares of each class owned on such date and the cost or other basis of each such share;

(b) A list of all property including money received upon the distribution, showing the fair market value of each item of such property other than money on the date distributed and stating what items, if any, consist of stock or securities acquired by the liquidating corporation after August 15, 1950;

(c) A statement of his ratable share of the earnings and profits of the liquidating corporation accumulated after February 28, 1913, computed without diminution by reason of distributions made during the month of liquidation; and

(d) A copy of such shareholder's written election to be governed by the provisions of Section 112(b)(7).

Treasury Department Form 964 was prescribed under the prior act. Presumably a similar form will be available in due course for 1951 liquidations. It is on this blank that the formal election is made in accordance with instructions printed thereon and with the Regulations. The original and one copy are required to be filed by either the shareholder or the liquidating corporation with the Commissioner of Internal Revenue, Washington 25, D. C. within thirty days after the adoption of the plan of liquidation. Once filed, a written election cannot be withdrawn or revoked. A copy of such form must be attached to and made a part of the shareholder's income tax return for his taxable year in which the liquidation occurs.

Section 112(b)(7) is highly specialized in nature, temporary in duration, and limited in application. As a relief provision it should be construed broadly in taxpayer's favor. Nevertheless, it would be wise to follow strictly the requirements of the statute so as to insure its beneficence.

DAVID F. SILVERZWEIG

David F. Silverzweig, past President of The Decalogue Society of Lawyers, has been elected Vice-President of The American Jewish Congress, Chicago division.

Liability of Charitable Institutions for Torts of its Agents

The following notes are condensed from an article by member Seymour B. Orner in the August 1950 issue of the Insurance Exchange Magazine.

The Supreme Court of Illinois recently held (Moore vs. Moyle, 405 Ill. 555, May 1950) that "the exemption of immunity which has been afforded a charitable institution should go no further than to protect its trust funds from being taken to satisfy its liability for the tortuous acts of its agents or servants." Therefore, when the charitable institution is protected by liability insurance, the latter can no longer refuse to pay on the ground that the charity is immune.

Apart from public liability insurance, it is not yet clear just what are trust funds and what are not trust funds, subject to execution. As a practical matter many charitable institutions had been carrying public liability insurance long before the decision in the above case. The Catholic Diocese of Chicago had gone even further; their insurance policy had an express provision that the defense of immunity could not be raised by the insurance company except on the request of the insured. The above decision undoubtedly will result in many more lawsuits against charitable organizations. On the other hand these organizations will likely more generally carry public liability insurance; it will be too hazardous for them not to do so in the present state of the law on this subject.—Ed.

FORUM COMMITTEE

Bernard H. Sokol, chairman of our Forum Committee announces that Arthur Goldberg, General Counsel for the Congress of Industrial Organization (C.I.O.) will be the main speaker on our Forum program, at a luncheon, at the Covenant Club, Friday, December 8.

Mr. Goldberg, whose headquarters are in Washington, D. C. is a former Chicagoan, and maintains a law office in this city. He has filled with distinction many posts in the labor movement in the United States. A fluent speaker, and an international authority in his field Mr. Goldberg's address should prove of great interest.

BOOK REVIEWS

By DAVID F. SILVERZWEIG

David F. Silverzweig, past President of The Decalogue Society of Lawyers is a former editor of "The Decalogue Bulletin" an earlier name of this publication.

Federal Practice Guide, by Harry G. Fins. Current Law Publishing Co. 172 pp. + Index. $4.50.

Earlier this year the newspapers carried an account of a trial in the United States District Court at Chicago where, after the trial had been in progress for fully a week, it was discovered that the federal court was without jurisdiction because, while the plaintiff was a citizen of Illinois and one of the defendants was a citizen of Canada and another of New York, a third defendant was also a citizen of Illinois. The newspaper story reported the case and its resultant dismissal with great hilarity. While the story may have been amusing to the newspaper's readers, it was not funny to the litigants, their attorneys, and the trial judge. Not alone had much time been lost and considerable moneys wasted, but there was the added plaguing question of whether the Statute of Limitations had not intervened to bar the suit in the state court where it should have been brought.

This case dramatizes a situation which occurs frequently in almost every law office. Because federal courts are tribunals of limited and not general jurisdiction, every practicing lawyer is constantly faced with the question: Will jurisdiction lie? The consequences of failure to answer this question correctly can prove not alone embarrassing but costly as well.

The great need of the bar for a simple and concise reference work to answer the many questions about federal practice has at last been fulfilled. *Federal Practice Guide* by Harry G. Fins is the answer.

One of the foremost authorities on Illinois practice and procedure, Prof. Fins has brought to this small but meaty volume the same high scholarship and succinct style of writing which characterize his earlier volumes on Illinois practice and procedure. Never one to use a page where a paragraph will suffice, or to use a long and involved sentence where a short simple one will tell the story, Prof. Fins has answered for the practicing lawyer 99% of all questions pertaining to federal practice *quickly and accurately*—with appropriate references and citations. Only for unusual points in federal practice will the practitioner be required to consult further authority.

The book opens, appropriately enough, with a chapter devoted to recent developments, commencing with the revolutionary decision in *Erie Railroad Co. vs. Tompkins,* which the author calls "a new era in federal practice." The intricacies of jurisdiction, ancillary jurisdiction, and restrictions on jurisdiction are discussed in succeeding chapters. Then follow in logical sequence chapters on venue, process, removal of causes, civil proceedings and criminal proceedings. Chapters are also devoted to habeas corpus, proceedings before three-judge district court, appeals and certiorari, and original jurisdiction of the Supreme Court. The book concludes with four appendices for easy reference on civil and criminal procedure.

In these days of narrowing state boundaries and the constant extension of government regulation and control to even the smallest business, with the horizon for federal practice growing ever wider, no lawyer who values his time or professional reputation can afford to be without this authoritative volume which is precisely what its title indicates—a guide to federal practice.

ARCHIE H. COHEN

At the 23rd Conference of the National Association of Referees in Bankruptcy held recently in Tulsa, Oklahoma, our First Vice President, Archie H. Cohen was reelected editor of the Association's Referees Journal, a quarterly.

Mr. Cohen resigned as Secretary-Treasurer of the Association.

ADVANCED

Member Irwin A. Goodman, head of the Trust Department of the Exchange National Bank, has been recently elected by its Board of Directors as Vice-President and Trust Officer.

ELECTED

Member Henry X. Dietch was elected Village President of the Village of Park Forest, Illinois. Prior to that date, he had been a Trustee of above village. Park Forest now has a population of 11,000 with a Jewish community of approximately 270 families.

State and U.S. Supreme Court Civil Rights Decisions

By LEON M. DESPRES

Member Leon M. Despres, former chairman Committee on Civil Rights, Mayor's Commission on Human Relations is a special instructor on collective bargaining, University of Wisconsin. The decisions cited are excerpts from an address delivered by Mr. Despres before our Society under the auspices of our Legal Education Committee.

In his book on "Growth of the Law," Cardozo says of the law that "the inn that shelters for the night is not the journey's end." His statement is particularly true today in the civil rights field. The great progress which we were able to report one and two years ago turned out not to be the journey's end. To some extent, the last year has in general been a re-tracing of steps.

In Illinois, the Supreme Court distinguished itself by two outstanding decisions in the field of religious liberty. In one of them, *People* v. *Levisen,* 404 Ill. 574, the Supreme Court reaffirmed the doctrine of religious liberty and permitted the defendants, who were Seventh Day Adventists, to give their children a parochial education without compelling them to send the children to public school. The Court held that the defendants were giving the children at least the equivalent of public school education, and permitted them to instruct the children at home. During the same year, the Supreme Court of Illinois has also affirmed the historic doctrine of separation of church and state. In the case of *P. ex rel. Bernat* v. *Bick,* 405 Ill. 507, the Supreme Court struck down the elaborate Domestic Relations Act of 1949, partly because it permitted the master in chancery to summon a priest, rabbi, a minister to a reconciliation hearing, and thus made it possible that the courts might become the vehicle for spreading a particular faith by an element of compulsion "which our basic law does not sanction."

Another important Illinois decision of the last year was *McWilliams* v. *Sentinel Publishing Company,* 339 Ill. App. 83, where our Appellate Court reaffirmed the procedural right to a fair trial, free of prejudice.

Elsewhere, we might emphasize the remarkable decision of the Appellate Court in California on *Fujii* v. *California,* where the California court extended the famous doctrine enunciated in the *Drummond Wren* case, 1945, Ontario Reports 778. The California court struck down the California Alien Land Law, on the ground that it was inconsistent with the United Nations Charter. In the *Drummond Wren* case, the Ontario court had gone out of its way to strike down a condition that land should "not be sold to Jews or persons of objectionable nationalities." The *Drummond Wren* decision was undoubtedly influential in bringing about the later United States Supreme Court decisions on restrictive covenants. The California Appellate Court has now extended the doctrine on striking down a racist law.

The most serious recent restrictions in the field of civil rights occurred on May 8, 1950, in two groups of decisions. In one group of three decisions (70 S. Ct. 718, 773, and 784) restricting the right to picket peacefully, the Supreme Court reverted to doctrines which many students considered to have been definitively discarded. Justice Frankfurter who spoke for the majority in two of the three decisions, used to be the great exponent of the liberal viewpoint on picketing, especially in his book on "The Labor Injunction" published in 1932. In his present opinions restricting peaceful picketing, the Court has now made a circuit back to the rationale of the early 1900s. In 1908, our Illinois Supreme Court expressed the then prevailing view in *Barnes* v. *Chicago Typographical Union No.* 16, 232 Ill. 424, when it said that there was no such thing as peaceful picketing. In 1932, Frankfurter was the great champion of the view that picketing is a peaceful means of expression which ought to be allowed, which the United States Supreme Court appeared to have adopted in 1937. Now we find the Supreme Court, through the same (?) Frankfurter, saying that picketing has an element of coercion

in it and forbidding peaceful picketing in three specific situations before the Court. Although the Court has not outlawed peaceful picketing in most situations, it has started on the road back to 1908 and, instead of acting solely against coercion, it has thrown out the baby with the bath.

Even more serious in its future implications for civil liberties is the Court's decision in *Douds* v. *American Communication Association,* 70 S. Ct. 674, where the Court upheld the Taft-Hartley Act oath requirement. This statute requires union officers to swear not only that they are not members of the Communist Party, but also that they "do not believe in, and are not members of and do not support any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods." Vinson's majority opinion readily admitted that the requirement infringed freedom of speech and even freedom of thought, and that the statute penalized thoughts and beliefs independently of acts. However, the Court expressed the opinion that the infringement was justifiable and would not be carried to undue lengths "while this Court sits." In a concurring and dissenting opinion, Justice Jackson said that he thought the requirement was valid as to membership in the Communist Party, because the Communist Party is a foreign directed conspiracy aimed at overthrowing the government by force and violence; but that it was invalid as to general beliefs. The dissent of Justices Black and Douglas was a ringing defense of traditional civil liberties.

Persons interested in the broad protection of civil right and civil liberties can hope only that *Doud v. American Communications Association* represents the farthest point to which the Court is willing to go. If the Court should follow the implications of all the statements made in Justice Vinson's opinion, then the opinion foreshadows very serious curtailment of traditional American liberties.

Developing Cardozo's happy figure of speech, we can concur that the inn that shelters for the night is not the journey's end, and hope that the journey to come will not be over stony and harsh country but rather through pleasant fields and still waters.

Municipal Court Manual

Revised and enlarged the new 1950 edition of *The Municipal Court Manual* of Chicago compiled by Judge Oscar S. Caplan is now available for sale. It is published by the authority of the Municipal Court of Chicago under the supervision of Justice Edward S. Scheffler and the Judges of the Municipal Court of Chicago.

First published in 1940 this volume has proved its utility to the busy practitioner. An important feature of the new edition is a set of nearly three hundred standardized jury instructions most of which have been revised and improved by the Chicago Bar Association.

This treatise also contains the rules of the Municipal, Appellate and Supreme Courts, the Civil Practice and Municipal Court acts; a summary of the procedure of the largest court of its kind in the country; a complete digest of all cases which affect or have a relevancy in the actual trial of cases and a resume of Appellate procedure in our state.

Judge Oscar S. Caplan, the author, is the first President and a founder of The Decalogue Society of Lawyers.

Champlin-Shealy Company of Chicago are publishers of the *Municipal Court Manual.* The price of the book is ten dollars ($10.00).

AUTHOR

Member Michael A. Gerrard is the author of a recently published compilation: *Notes Concerning the Trial of Personal Injury Actions.* Scheffer Press are the Publishers, $3.00.

LEGAL EDUCATION MEETINGS

FRIDAY, NOVEMBER 17

CURRENT ILLINOIS DECISIONS

HARRY FINS

Author, Instructor, John Marshall Law School

FRIDAY, DECEMBER 22

CURRENT FEDERAL COURT DECISIONS

BERNARD H. SOKOL

Former Assistant U. S. District Attorney

Chancery Costs and Procedure

By BERNARD M. EPSTEIN

Member Epstein, Master in Chancery Circuit Court of Cook County is a former associate editor of the Commercial Law Journal.

As presently organized, the Chancery courts do not afford litigants in many cases adequate relief. The judges assigned to the chancery call are so burdened with administrative and procedural problems that they have little time left to hear the evidence in contested cases. On the other hand, the heavy costs involved in hearings before Masters in Chancery frequently deter claimants from asserting their rights; they are thus deprived of them. And fundamental rights of litigants are being subordinated in the interest of expediency in the avoidance of the cost burden.

While the Master in Chancery is a ministerial officer, the present practice gives to him the responsibility of hearing the evidence and evaluating it in a light of his appraisal of the credibility of the witnesses who appear before him. The relic of our common law heritage of magnifying procedural importance has distorted, in Cook County, the modern and enlightened concept in jurisprudence prevailing in England and in civil law countries of giving to the facts of the controversy primary consideration and thought. Equity jurisprudence, created to overcome the injustice of the law courts and their emphasis upon procedural importance in the awarding of relief, has even to this day, in our Illinois procedure, failed to completely free itself from that impediment in our thinking as common law lawyers. The Chancellor now listens to all motions with respect to pleadings and undertakes all administrative duties of his court in receivership and other legal custodial matters and relegates to his ministerial officer, the Master in Chancery, the important responsibility of hearing the evidence, viewing the witnesses and appraising their credibility.

The English courts while retaining the office of Master in Chancery as a part of their judicial machinery, have long ago assigned to this ministerial officer the duties with which our Judges are now burdening themselves. All motions and administrative matters in England are heard and disposed of by the Master in Chancery, and the Judge, as he should properly do, concerns himself only with the hearing of the evidence in dispute and entering the decree, except where a statement of account may be required. Precedent exists in Cook County in having the Master in Chancery assist the court in procedural and administrative functions. During the 1930s, when our chancery courts were burdened with a large volume of foreclosure work, the Master in Chancery aided the Judges in the disposition of motions and other administrative matters.

While the legislature might within the framework of present day constitutional limitations, establish Masters in Chancery as salaried court officers, the absence of the need for such services by the Masters in down state counties in Illinois would introduce a practical legislative and constitutional problem which I believe could not be overcome. If a proper constitutional amendment could be enacted, consideration might then be given to assigning to Masters in Chancery, at least in Cook County, their proper function of ministerial duties and leaving to the court the responsibility of listening to and weighing the effect of the evidence, which is and should be the important phase of any litigation. Master's costs, of expensive transcripts and other incidental costs, which make chancery litigation on references a burden, might be thus eliminated.

While hoping for progress and the modernization of our antiquated judicial machinery, the bar could assist in abbreviating chancery records by a very simple expedient. The informality of the proceedings and the recognition of the ministerial status of the Master's office tends towards much laxity in the presentation and receipt of evidence in Master's hearings. A statement of the findings sought by each of the parties litigant submitted in

advance of the hearing could aid as a guide post to the Master in ruling upon the materiality of the evidence offered. Federal courts in some districts require in non-jury causes, that the counsel submit in advance of the hearing a statement of the findings which the Court will be required to make or counsel desires to have him make. While the Master does not have the power to require the parties to prepare and submit such ultimate findings and no rule of courts has been enacted for that purpose, I should like to have the bar, as an aid to the Masters and in order to abbreviate the record, prepare and submit in advance of each hearing, suggested findings of fact. The mere preparation of such facts will tend to aid the trial counsel in clearly defining the issues and reduce redundancy of most chancery records.

If the much needed constitutional amendment is ever passed to modernize our judicial machinery, I submit for consideration the creating of Masters in Chancery as salaried officers to perform the administrative and procedural duties now foisted upon the Judges, who will then be free to give their undivided attention to the most important phase of any law suit and that, as I again repeat, is the hearing of the evidence and its evaluation.

SORROW

The Decalogue Society of Lawyers announces with deep regret the death of the following members:

Maxwell Landis
Harry Markin
Samuel H. Rosenberg
Albert Sabath

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A Publication of The Decalogue Society of Lawyers

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Appointment Book and Diary

Oscar M. Nudelman, the perennial Chairman of the Society's Appointment Book and Directory, reports that work on the 1951 issue of this volume is considerably advanced and that it will reach the membership, on time, late in December.

The book will contain, as usual, the alphabetical and special listing of our entire membership together with a special address of out of town members, by city and state; a three year calendar, a perpetual calendar, interest calculations, postal rates, cash book pages and other useful information. Ample space provisions have been made, on each page, for daily appointments and court call entries. A special feature of the appointment book is the marking of important Jewish holidays whenever same are celebrated.

The introduction of week-end court sessions and other changes of recent months in the practice of Law suggested an innovation: the lawyer whose court engagements fall on a Sunday will find that the new directory provides necessary space to mark possible calls on that day.

The cost of publishing the Appointment Book which all members get free of charge runs into thousands of dollars. This cost is defrayed by advertisements which appear in the book. Without such patronage, of course, the expense involved on the production of the Diary would have to be borne by the Society. No one man, insists Nudelman, or single committee could underwrite the task of obtaining advertisements to pay for the cost of the book unless the membership as a whole helped in the over-all enterprise of making this important service a glad reality. Our chairman urges all members to solicit patronage from clients and friends. There is still time to help. A page in our Appointment Book-Directory costs fifty dollars; a half page, twenty five dollars. Please contact our chairman for all details necessary. His address and phone number are as follows: Oscar M. Nudelman, Chairman, Appointment Book and Directory, 134 N. La Salle Street, FRanklin 2-1266.

Decalogue Luncheon Meetings

On Friday of each week the Board of Managers of The Decalogue Society of Lawyers meets in a private dining room, for luncheon, at noon, at the Covenant Club, 10 North Dearborn Street. Members are invited to attend, listen to committee reports, and learn of the activities of our Bar Association. No reservations necessary.